

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-110152
		TRIAL NO. B-9204670
Respondent-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
DWIGHT ALLEN,	:	
Petitioner-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. See S.Ct.R.Rep.Op. 3(A); App.R. 11.1(E); Loc.R. 11.1.1.

Petitioner-appellant Dwight Allen appeals from the Hamilton County Common Pleas Court's judgment dismissing his "Motion to Vacate a Void Sentence * * and/or Petition for Postconviction Relief per R.C. 2953." We affirm the court's judgment.

Allen was convicted in 1993 of aggravated murder, aggravated burglary, aggravated robbery, and two counts of rape. He unsuccessfully challenged his convictions in appeals to this court and to the Ohio Supreme Court. See *State v. Allen* (May 25, 1994), 1st Dist. Nos. C-930159 and C-930160, appeal not accepted for review (1994), 70 Ohio St.3d 1465, 640 N.E.2d 527.

In 2010, he filed with the common pleas court his "Motion to Vacate a Void Sentence * * * and/or Petition for Postconviction Relief per R.C. 2953." The court granted the state's motion to dismiss the "Motion * * * and/or Petition," and this appeal followed.

Allen advances on appeal a single assignment of error in which he assails the common pleas court's "fail[ure] to address the issue of subject matter jurisdiction." We overrule the assignment of error upon our determination that Allen's "Motion * * * and/or Petition" was reviewable as a postconviction petition under the standards provided by R.C. 2953.21 et seq. and was subject to dismissal for lack of jurisdiction.

In his "Motion * * * and/or Petition," Allen asserted that his multiple-count indictment had been defective because the grand-jury foreperson had not signed each count. This defect, he insisted, deprived the trial court of jurisdiction to convict him for the offenses charged in the indictment and rendered his convictions void.

The postconviction statutes provide "the exclusive remedy by which a person may bring a collateral challenge to the validity of a conviction or sentence in a criminal case." R.C. 2953.21(J). Therefore, the common pleas court, faced with Allen's collateral attack upon his convictions, properly reviewed his "Motion * * * and/or Petition" as a postconviction petition under the standards provided by R.C. 2953.21 et seq. See *State v. Bush*, 96 Ohio St.3d 235, 2002-Ohio-3993, 773 N.E.2d 522, ¶10. And the court properly dismissed the "Motion * * * and/or Petition," because the court had no jurisdiction to entertain it.

Allen satisfied neither the time restrictions of R.C. 2953.21(A)(2), nor the jurisdictional requirements of R.C. 2953.23. Therefore, R.C. 2953.21 et seq. did not confer jurisdiction on the court to entertain his "Motion * * * and/or Petition."

And while a trial court retains jurisdiction to correct a void judgment, see *State ex rel. Cruzado v. Zaleski*, 111 Ohio St.3d 353, 2006-Ohio-5795, 856 N.E.2d 263, ¶18-19, Allen's defective-indictment claim was forfeitable. See R.C. 2941.29 (requiring a claimed "defect in form or substance of the indictment" to be raised pretrial "or at such time thereafter as the [trial] court permits"); Crim.R. 12(C)(2)

(requiring that a defective-indictment claim, other than a claimed “failure to show jurisdiction in the court or to charge an offense,” be raised pretrial). Therefore, the claimed defect in Allen’s indictment, even if demonstrated, would not have rendered his convictions void. See *State v. Morgan*, 181 Ohio App.3d 747, 2009-Ohio-1370, 910 N.E.2d 1075, ¶133 (overruling *State v. Shugars*, 165 Ohio App.3d 379, 2006-Ohio-718, 846 N.E.2d 592, to the extent of its holding that a defective indictment deprives a court of jurisdiction to try the defendant); *State v. Wright*, 8th Dist. No. 92594, 2010-Ohio-243, ¶62 (in which the court, in rejecting a “claim that the indictment is void,” noted that R.C. 2941.29 required that the defect be raised pretrial).

Accordingly, we affirm the judgment of the court below.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., CUNNINGHAM and FISCHER, JJ.

To the Clerk:

Enter upon the Journal of the Court on November 10, 2011

per order of the Court _____.
Presiding Judge